

REMARKS

Reconsideration of presently solicited Claims 1 to 7 and 33 respectfully is requested. For the reasons indicated hereafter these claims are urged to be in condition for allowance.

Applicant has provided a process selecting wheat plants which exhibit genetically-controlled naturally-occurring glyphosate herbicide resistance which is not attributable to genetic engineering. Mature wheat seeds that are not genetically engineered for herbicide resistance are soaked in a liquid comprising glyphosate herbicide for a period of time sufficient for the glyphosate herbicide to reach the embryos of the wheat seeds. Following soaking the seeds are planted to produce at least one wheat plant, and a selection is made of a wheat plant which exhibits genetically-controlled naturally-occurring glyphosate herbicide resistance that is not attributable to a foreign gene for herbicide resistance introduced by genetic engineering.

Claims 8 to 32 are cancelled without prejudice in order to expedite prosecution and process Claim 33 is newly added. Applicant reserves the right to file one or more Divisional Patent Applications directed to the non-elected subject matter.

On September 23, 2005, 2,500 wheat seeds named 'W2-1' were deposited under the terms of the Budapest Treaty at the American Type Culture Collection and have been accorded Accession No. PTA-7044. Such seeds are discussed in Applicant's Specification, and the Specification has been amended to make reference to this deposit. The undersigned attorney of record states that these

seeds will be irrevocably and without restriction or condition released to the public upon the issuance of a patent.

The continued rejection of Claim 7 under 35 U.S.C. § 112, first and second paragraph, would be inappropriate. Claim 7 has been amended as suggested by the Examiner to state "produced from the cross of the 'WA7824' and 'Zeke' wheat varieties". Newly presented Claim 33 specifies "that the seeds of step (a) include the 'WA7824' and 'Zeke' wheat varieties in their ancestry". As discussed in Applicant's Specification, these wheat varieties are particularly preferred sources for genes which import the genetically-controlled naturally-occurring glyphosate herbicide resistance. Since the 'WA7824' and 'Zeke' wheat varieties are already known and publically available, those of ordinary skill in the art have access to the plants and when armed with Applicant's teachings are able readily to practice the claimed invention. The genetic determinants from each variety are heritable and can be readily combined at will in a single wheat plant by conventional and routine plant breeding and can be readily transferred among wheat plants. Alternatively, other wheat varieties can be employed in step (a) of the claimed process. The withdrawal of the rejection is in order and respectfully is requested.

The continued rejection of presently solicited Claims 1 to 6 as being obvious to one of ordinary skill in the art under 35 U.S.C. § 103(a) over the dissimilar teachings of U.S. Patent No. 6,339,184 to Smith would be inappropriate. The process of Smith in all instances requires an initial induced mutagenesis step wherein seeds are subjected to a chemical mutagen such as sodium azide. See in this regard Col. 4, lines 62 and 63, where it is stated: "Wheat seeds are mutagenized with a chemical mutagen by conventional means". See also a more

detailed mutagenesis discussion at Col. 5 of Smith et al. On the contrary, Applicant's presently claimed process is carried out in the absence of an induced mutagenesis step and instead uncovers naturally-occurring glyphosate herbicide resistance which has been found by Applicant to be present in wheat. Such concept is totally absent in the teachings of Smith.

Additionally, Smith is concerned exclusively with producing resistance to acetohydroxyacid (AHAS) inhibiting herbicides. On the contrary Applicant's process uncovers resistance to the different glyphosate herbicide that is naturally-occurring in wheat.

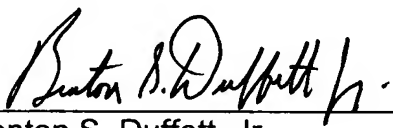
There is no teaching in Smith that it would ever be possible to provide the dissimilar glyphosate herbicide resistance in wheat by any method, and the teachings of Smith always require induced mutagenesis which is not practiced by Applicant. There would be no reasonable expectation that Smith could ever obtain (a) herbicide resistance in the absence of induced mutogenesis, or (b) resistance to glyphosate herbicide. No prima facie showing of obviousness has been made. It is basic to the examination process that in order to establish prima facie obviousness of a claimed invention all of the claim limitations must be taught or suggested by the prior art. See M.P.E.P. § 2143.03 in this regard. To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 U.S.P.Q. 580 (CCPA 1974). "All words in a claim must be considered in judging the patentability of that claim against the prior art." *In re Wilson*, 424 F.2d 1382, 1385, 165 U.S.P.Q. 494, 496 (CCPA 1970).

If there is any remaining point that requires clarification prior to the allowance of the Application, the Examiner is urged to telephone the undersigned attorney so that the matter can be discussed and promptly resolved at a personal interview.

Respectfully submitted,

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